Supreme Court, U.S.
FILED

(1)

'98 503 SEP 21 1998

OFFICE OF THE CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

GANY MIKE BELLO ------PETITIONER

VS.

CITIZENS NATIONAL BANK et al.
AND RAY DICKERSON-------RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI TO

THE SUPREME COURT OF THE STATE OF TEXAS

PETITION FOR WRIT OF CERTIORARI

GANY MIKE BELLO (PRO-SE PETITIONER)
4200 S. HULEN SUITE 600
FORT WORTH, TX 76109
TEL: (817) 732-4858

37 PP

QUESTIONS PRESENTED

1. Whether state courts are free to refuse to enforce, federal laws that outlawed redlining, refusal to accept generally a class of check for deposit by banks, and misrepresentation of federal statute to commit fraud by National bank officer and director. Where petitioner raised these federal questions in conjunction with state deceptive trade practices acts right from the beginning of the filing of his complaints and in his motion for summary judgment, and state courts summarily dismiss those federal claims, questions and issues by upholding state demurrer, waiver and larches defenses in direct conflict with federal law and the Constitution and as interpreted in Testa v. Katt, 330 US 386 (1941), and Credit Union National Assn. Inc., Board of Governors Fed. Res. Sys., 700 F. Supp. 1152, 1156 (D.D.C 1988), and 12 USC § 4002(a)?

2. Whether a National bank and its director violated the laws of the United States and are liable when they intentionally misrepresented the law, obtained consumer credit report of a checking account applicant under false pretence and without his consent and disclosure required under 15 USC § 1681(a)(2); 15 USC 1681(n), and 15 USC 1681(q), and armed with the false information obtained therein, deceived and damaged the customer, his business, and his reputation continuously thereafter?

3. Whether where state courts refused to enforce federal law and both parties filed motions for summary judgment and Petitioner's motion citing federal laws was denied in its entirety while Respondents' raising state defenses was granted and state supreme court denied writ, does the United States Supreme Court have jurisdiction and duty to decide the case as it should have been decided at the trial court as explained in Brown v. Western Railway of Alabama, 338 US 294 (1949)?

4. Under due process and equal protection clause of the Fourteenth Amendment of the United States, can a state arbitrarily deny the automatic right to amend petition conferred by statute to parties and which the only ground for exception allowed under the law is where prejudicial surprised is proven, and where Petitioner filed his Fifth amended petition timely, and Respondents did not raise, nor showed prejudice and surprise as required under the state law and the trial court struck the amended petition while it accepted Respondents' motion for reconsideration of summary judgment and summarily dismissed the cause, without violating the Fourteenth amendment, when the state court of appeals affirmed the trial court's ruling without addressing the underlying federal questions as to the material issue as well as to the procedural due process, and the state supreme court denied writ, leaving the federal issues unresolved and in conflict with this Court?

LIST OF ALL PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition are as follows:

PETITIONER (PRO-SE)

GANY MIKE BELLO
4200 S. HULEN
SUITE 600
FORT WORTH, TEXAS 76109

RESPONDENTS

CITIZENS NATIONAL BANK
6001 SOUTHWEST BLVD
BENBROOK, TEXAS 76109

RAY DICKERSON
PRESIDENT/DIRECTOR OF CITIZENS NATIONAL BANK
6001 SOUTHWEST BLVD
BENBROOK, TEXAS 76109

GEORGE CHAGGARIS
PRESIDENT/DIRECTOR OF CITIZENS NATIONAL BANK
6001 SOUTHWEST BLVD
BENBROOK, TEXAS 76109

TABLE OF CONTENTS

OPINIONS BELOW... Page 1
JURISDICTI Page 2
CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED..... Page 3
STATEMENT OF THE CASE Page 4
REASONS FOR GRANTING THE WRIT Page 8
CONCLUSION..... 11
Page

INDEX TO APPENDICES

APPENDIX A Decision of Court of Appeals Second District of Texas 10/2/1997 .... 1- 12

APPENDIX B Final summary judgment, 48th Judicial District of Tarrant County, Texas 13

APPENDIX C The Supreme Court of Texas denied Writ 14

APPENDIX D The Supreme Court of Texas denied Motion For Rehearing on June 23, 1998. ...15

APPENDIX E Petitioner's Fifth Amended Petition 16

APPENDIX F Texas Rule of Practice 17

APPENDIX G Defendants Motion To Strike Fifth Amendment. 18-19.

TABLE OF AUTHORITIES

	PAGE
Marbury v. Madison 1 Cranch, 5 US 137 (1803).	7
Testa v. Katt, 330 US 386, 67 S.Ct. 810 (1947)	7
Awotin v. Atlas Exchange National Bank, 295 US 209, 55 S.Ct. 674 (1935)	7
Brown v. Western Railway of Alabama, 338 US 294, 70 S.Ct 105 (1949)	7
Dice v. Akron, Canton & Youngstown Rlwy. Co., 342 US 359, 72 S.Ct. 312 (1952)	7
First National Bank of Guthrie Center v. Anderson, 269 US 341, 46 S.Ct. 135 (1926)	7
Railway Express Agency v. New York, 336 US 106, 69 S.Ct. 463 (1949)	8
Sola Electric Co. v. Jefferson Electric Co., 317 US 173, 63 S.Ct. 172 (1942)	8
Ward et al. v. Love County, 253 US 17, 40 S.Ct. 419 (1920)	
Credit Union National Assn. Inc., v. Board of Governors Fed. Res. Sys., 700 F.Supp. 1152 (D.D.C. 1988)	(I)

UNITED STATES CONSTITUTION

Article VI, § 2 US Constitution.

> " This Constitution, and the laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby, and any thing in the Constitution or laws of any State to the contrary notwithstanding."

STATUTES AND RULES

15 USC § 1681(d)
15 USC § 1681(n)
15 USC § 1681(q)
12 USC § 4002(a)
12 USC § 4003(2)
12 USC § 4010(a)(2)

OTHER
FEDERAL RULES OF CIVIL PROCEDURE, RULE 56
VERNON TEXAS RULES OF CIVIL PROCEDURE, RULE 161(a), 161(c) 161(f)

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the highest state court to review the merits, Court of Appeals Second Judicial District of Texas, sitting in Fort Worth appears at Appendix A, the Motion For Rehearing was overruled. The decision of the court of last resort, The Supreme Court of Texas, denying writ appears at Appendix C. And the decision of the court of last resort, The Supreme Court of Texas, overruling the Motion For Rehearing on June 23, 1998 appears at Appendix D. These decisions are unpublished.

JURISDICTION

The date on which the highest state court decided my case was April 30, 1998, it denied the Petition for Review, a copy of that decision appears at Appendix C

i). A timely Motion For Rehearing was filed and it was overruled on June 23, 1998, and a copy of the order denying rehearing appears at Appendix D.

The Jurisdiction of this Court is invoked under 28 U.S.C § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article VI, § 2 US Constitution.

> "This Constitution, and the laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Fourteenth

Amendment to the United States Constitution: § 1.

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of the law; nor deny to any person within its jurisdiction the equal protection of the laws."

1. National Banking Act
2. Texas Rules of Practice, Rule 63.
3. United States Expedited Funds Availability Act 12 USC § 4006 et. seq.
4. United States Fair Credit Reporting Act 15 USC § 1681 et. seq.
5. United States Competitive Equality Act 12 USC § 4000 et seq.

STATEMENT OF THE CASE

Petitioner, an African American business owner in the oil and retail service station business, went to open a checking account with the Respondents on November 9th 1992. (Tr. 2 Original Petition) Petitioner filled out the new account form and paid his deposit. However, the clerk told him to wait that the Vice President of the Bank, George Chaggaris, needed to approve the account before it can be open. (Tr. 2) While waiting, George Chaggaris obtained Petitioner's consumer credit report under the false pretense that he was applying for a loan. Respondents then demanded, after illegally obtaining the credit report, that Petitioner fill out a loan application form in order to cover up their intentional and unlawful act. (Tr. 2), (Tr. 656, Plaintiff's Motion For Summary judgment), (Tr. 1155, Fifth Amended Petition)

Petitioner refused to fill out a loan form since he was not applying for a loan, and the Respondents told him to just write his name and sign the form. (Tr. 2) After writing his name and signing the form, Respondents claimed they are too busy and that Petitioner can leave his deposit and the account will be opened later. (Tr. 2) Baffled by this confusing actions, Petitioner left his deposit as instructed and called back later, only to be told by George Chaggaris that the account could not be opened. Respondents demanded that, unless Petitioner comes in and sign a form allowing them to obtain a performance recommendation from his previous bank, his account would not be opened. Petitioner protested this run-around, but George Chaggaris explained that that is their practice before any account is opened, and that it was required under a banking law. (Tr. 2), (Tr. 657), Tr. (1158)

On November 13, 1992, Petitioner went in met with George Chaggris and signed the prepared performance recommendation form George Chaggaris gave to him. It sent to his previous bank and after it was returned filled out, showing a satisfactory record Respondents opened his account. (Tr. 2), (Tr. 657), Tr. (1158) This was four days after Respondents have accessed his credit report under false pretence and without his consent, and without disclosing to him that they had accessed his credit report.

Why Petitioner's credit report was obtained in the first place when it was not a requirement for opening an account, and a letter of performance recommendation demanded from him can only be explained by the fact that it may be racially motivated, since Petitioner is black.

Armed with the credit report, which contained a false negative dispute, Respondents proceeded to mislead, deceive and damage Petitioner's business, his reputation, and inflicted severe intentional emotional and mental anguish on his person, from which he is still trying to recover.

Respondents refused to accept checks for deposit to Petitioner's account, they demanded that he must bring his customers that gave him the checks to the bank for the bank to verify their signature physically. (Tr. 2), (Tr. 657), Tr. (1159) Respondents stated verbally and in writing that an endorsement verification rule demanded that they verify the signatures of endorsers that way, and that there is no other way they could accept checks for deposit from Petitioner. (Tr. 2), (Tr. 657), Tr. (1158) After losing several customers, Petitioner was able to persuade a regular customer to come with him to Respondents for endorsement verification. At the bank, George Chaggaris demanded that the customer show his drivers license, which he did. George Chaggaris then proceeded to photocopy the customer's driver's license. (Tr. 2), (Tr. 657), Tr. (1158) The customer protested, but George Chaggaris demanded that, unless he copied the license he would not accept the check for deposit, so I persuaded the customer to allow Respondents to make the copy, which they did.

Afterwards, the customer stated that he is sure that Petitioner must be in trouble with the law and the banks. He swore never to trade with Petitioner again, and he never did. (Tr. 2), (Tr. 657), Tr. (1158) As a result of Respondents acts, words quickly got around that Petitioner must be a dubious business man and that it is not safe to trade with him. (Tr. 2), (Tr. 657), Tr. (1158)) Petitioner protested to the Respondents showing their actions were inflicting severe and long term damages on his business and his person.

Respondent, George Chaggaris, responded in writing, stating that they were only following the law of endorsement and acceptance of checks for deposits and that, it is the way they do business and it is not going to change. (Tr. 2), (Tr. 657), Tr. (1158) The damage has been done by this time and it continues to accumulate. Petitioner closed his account shortly thereafter and went to another bank. He then discovered, that he had been intentionally and unlawfully mislead, deceived and damaged by the Respondents.

Petitioner who is a layman, broke, losing his business and his house, and without means to afford a lawyer filed this lawsuit timely on November 4, 1994. Respondents excepted to the complaints and the plaintiff amended.

Respondents excepted again to the second amended complaint and asked for hearing on the exceptions, a hearing was had. The trial court overruled 16 of 23 exceptions filed by the Respondents, and Petitioner amended in response to the 7 exceptions sustained, timely. (Tr. 146) Respondents later moved for summary judgment to remove Respondent, George Chaggaris from the action, arguing that he cannot be held personally liable for any of his acts. Petitioner filed his response in opposition to the motion, showing that such move was premature and there were material issues of fact therefore there is no ground for the motion as a matter of law but, the motion was granted.

Petitioner filed his motion for Summary judgment, shortly thereafter. (Tr. 657) Respondents also, filed another summary judgment motion. This time, asking that the whole case be summarily dismissed, raising again all the 16 objections already overruled and using it as a demurrer an already outlawed defense in Texas and state defenses of larches against federal causes of action. A hearing was held on May 28, 1996.

Petitioner's Motion, raising specifically federal law, statutes and federal case law interpretation on Fair Credit Reporting Act; Expedited Fund Availability Act and; National Banking Act controlling the opening of checking accounts, acceptance of checks for deposit, and the required consent and mandatory disclosures for obtaining consumer credit report, was denied in its entirety, in spite of the fact that Texas have no law addressing this area of the complaint. Respondents' motion, raising state defenses outlined above, was granted in part. The court then issued an order freezing the case from any further filing, and set the cause for trial.

Surprisingly, Respondents filed a motion for reconsideration of final summary judgment later, and in violation of the courts order, but the court accepted it. Petitioner then filed his Fifth Amended Petition, which he had withheld because of the order freezing the case.

But, the court struck the Fifth Amended Petition which is of right in Texas by statute, (Appendix G.), and without Respondents raising the mandatory ground required to grant a motion to strike an amended petition (Appendix H), in disregard for the federally protected right under due process and equal protection of the United States Constitution. The trial court arbitrarily struck Petitioner's Fifth Amended Petition, while it granted Respondents Motion for final summary judgment and declared the case final.

Petitioner appealed to the Second Judicial District Court of Appeals of Texas. The court affirmed the lower courts summary judgments refusing to enforce federal law. He appealed to Texas Supreme Court, the petition was denied. He filed a timely Motion For Rehearing, but it was overruled on June 23, 1998. Petitioner now timely files his application for the writ of Certiorari to the Supreme Court of Texas.

REASONS FOR GRANTING THE PETITION

It is well understood that, a review on a writ of Certiorari is not a matter of right, but of judicial discretion. However, this court has historically and by tradition granted writ for compelling reasons, such as, those involved in this case. The legal issues and the facts of the case, involving a National Bank and an ordinary American citizen in the legitimate pursuit of the American dream, and the destruction of those dreams by an institution chartered to abide by the law and promote the policy of the united States is of high public interest deserving redress necessary to foster the continuation of cherished American values.

This case is also compelling and necessary of this courts review for the following reasons: It affects fundamentals of our American value, the access to justice and judicial process; It affects the protection of property and economic interests; and finally it threatens the Supremacy clause of the United States Constitution.

A state court of last resort, in this case, The Supreme Court of Texas let stand the lower courts refusal to enforce federal law in the area of banking and commerce where Texas has no applicable law and where the lower courts have granted summary judgments in three stages accepting illegal demurrer and larches to render Congressional law, intent and purpose null and void. In direct conflict with the supremacy clause of the United States Constitution.

Under the material issues of this cause the Texas courts rejected the interpretation of federal questions concerning National Banking Acts; Expedited Funds Availability Act and; Fair Credit Reporting Act which mandate disclosure when credit reports are accessed. The state courts outright conflicted or overruled the decisions laid down by this court. in, Testa v. Katt, 330 US 386, 67 S.Ct. 810 (1947); Awotin v. Atlas Exchange National Bank, 295 US 209, 55 S.Ct. 674 (1935); Sola Electric Co. v. Jefferson Electric Co., 317 US 173, 174, 63 S.Ct. 172 (1942); Ward et al. v. Love County, 253 US 17, 40 S.Ct. 419 (1920).

A state court of last result, has decided an important federal question in a way that conflicts with relevant decisions of this Court, summarily dismissing claims asserting federal questions, and accepting state demurrer to defeat federal laws. In essence the state courts have summarily overruled the decisions of this Court on federal law and on the interpretation of the United States Constitution contrary to the holding in Marbury v. Madison 1 Cranch, 5 US 137 (1803).

In a similar situation in Brown v. Western Railway of Alabama, 338 US 294, 70 S.Ct. 105 (1949), this Court emphatically stated and held that, where the state courts sustained demurrer on the pleading and dismissed federal causes of action and state court of appeals affirmed and the supreme court of Georgia denied writ, it granted Certiorari, holding that it is necessary because the implication of the dismissal were important to a uniform application of federal statutes in state and federal courts. This Court also went further, it construed and accepted the petition, and held that it gave enough notice upon which a jury can determine injury. Id. This Court elaborated further and held that federal rights cannot be defeated by the forms or local practice, therefore it cannot accept as final a state court's interpretation of allegations in a complaint asserting it. Brown at 107, 296. Dice v. Akron, Canton & Youngstown R. C0., 342 US 359, 72 S.Ct. (1952); First National Bank of Guthrie Center v. Anderson, 269 US 341, 46 S.Ct. 135 (1926).

Also, in Ward et al. v. Love County, 253 US 17, 40 S.Ct. 419 (1920), as in this case, where Petitioner raises due process and equal process violations as to how his amended complaint, his amended brief and application for petition to the state court of last resort were denied, thereby depriving him of his rights and property interests, privileges and immunities under the Constitution of the United states.

In Ward, at 22-23, 421 this Court held that under such circumstances, even matters that may not originally be federal cause will then become federal issue germane to a state court action and federal law cannot be disregarded without neglecting or renouncing a jurisdiction conferred by law and designed to protect and maintain the Supremacy clause of the Constitution and the laws made in pursuance thereof. Id.

Finally, in Testa at 389, 812 where Rhode Island declined to enforce federal law, this Court issue writ and emphatically held that "We cannot accept the basic premise of the Rhode Island Supreme Court that it has no more obligation to enforce a penal law of the United States than it has to enforce the penal law of another state or foreign country. This Court continued, " Such broad assumption flies in the face of the fact that the States of the Union constitute a nation and in disregard of the purpose and effect of Article VI § 2 of the United States Constitution. Id. Therefore, under these compelling reasons and in continuation of this Court's tradition and concern for matters of great public interests and of Constitutional significance, Petitioner humbly pray that this Petition be granted for these reasons and writ be issue to the Supreme Court of Texas on this case.

By granting a review to this cause with its underlying material facts, this Court will be setting a standard for justice in this nation that will reassure the poor and the under privileged that if in fact they stay within the process, work hard and diligently and properly petition their government, their cause can be heard. Furthermore, by such grant of discretionary review, this Court would be asserting emphatically again, as it has in the past that, Congressional acts and the Constitution are the laws of the nation and shall not be arbitrarily disregarded. Consequently, this will go a long way to reemphasize the meaning and significance of the Supremacy clause. It will also send a positive signal across the nation that, the rights, privileges and immunities of the citizens of the United States cannot be arbitrarily denied by states without consequence irrespective of the affluence, power, position, or lack thereof by the persons involved.

CONCLUSION

Petitioner pray that the petition for certiorari should be granted.

Respectfully submitted

Mike Bello.

Gany Mike Bello (Pro-se Petitioner)
4200 S. Hulen St Suite 600
Fort Worth, Texas 76109
Tel. 817 732-4858

Date: September 21, 1998.

App. A

COURT OF APPEALS
SECOND DISTRICT OF TEXAS

Chief Justice 100 weatherford st, Fort Worth Tx 76196
John Cayce Tel. 817 884 1900. Clerk Yvonne Palmer

JUSTICES
Sam Day
Terrie Livingston
Lee Ann Dauphinot
David Richards
Williams Brigham
Dixon W. Holman

OCTOBER 2, 1997.

Re: Court of Appeals Number: 2-96-287-CV
Trial Court Case Number: 48-156310-94

Style: Gany Mike Bello d/b/a Nucleus Oil Company
v. Citizens National Bank

Dear Mr. Bell and Counsel:

The judgment of the trial court in the above cause was affirmed today. Copies of the opinion and judgment of this Court are hereto attached.

Respectfully yours,

Yvonne Palmer, Clerk

"S/ Rosemary Flores
By: Deputy Clerk.

COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

Gany Mike Bello d/b/a Nucleus Oil Company.	§	From the 48th District Court of Tarrant County, 48-156310-94
	§	October 2, 1997.
v.	§	
	§	Opinion by Justice Brigham
Citizens National Bank	§	Not to be publish.

JUDGMENT

This Court has considered the record on appeal in this case and is of the opinion that there was no error in the judgment of the trial court. It is ordered, adjudged, and decreed that the judgment of the trial court is affirmed.

It is hereby ordered that Gany Mike Bello and his sureties Sheila Birdow and Jerry Harris pay all costs of this appeal, for which let execution issue.

"S/ William Brigham.

OPINION

I Introduction

Appellant Gany Mike Bello d/b/a Nucleus Oil Company appeals the trial court's grant of summary judgment in favor of appellee Citizens National Bank ("CNB"). Bello sued CNB for violations of the Texas Deceptive Trade Practices Act, breach of contract, tortious interference, defamation, invasion of privacy, and intentional infliction of emotional distress based on CNB's refusal to accept third party checks from Bello without verification of endorsements. Because there are material fact issues relating to Bello's causes of action, summary judgment was proper. We affirm the trial court's judgment.

II THE SUMMARY JUDGMENT EVIDENCE

Bello opened a business account at CNB in the name of Nucleus Oil Company on November 13, 1992. He signed an authorization for CNB to seek a credit report. The credit report showed that another Fort Worth bank had not allowed Bello to open an account and that he had overdrawn his NationsBank account by $ 6300[1].

George Chaggaris, the vice-president of CNB, told Bello that CNB's procedure required verification of the initial endorsement on a third –party check before CNB could accept the check. Bello objected to and complained about the verification procedure because he thought the rules, requirements and demands levied by CNB created losses to his business, but kept his account at CNB even though he admitted that other banks would allow deposit of third party checks without verification. On at least one occasion, Bello brought the initial endorser of a third party check to CNB so Bello could deposit it. Bello....

[1]

....continued to do business with CNB for ten months before he closed his account.

III PROCEDURAL HISTORY AND BELLO'S ALLEGATIONS

Bello sued CNB and Chaggaris, alleging that the problems Bello encountered with CNB severely damaged his business reputation and caused the collapse of his business. Trial court granted summary judgment in favor of chaggaris ("the first summary Judgment")

Bello and CNB filed motions for summary judgment. The Trial court denied Bello's motion and granted CNB's motion, but not as to Bello's allegations of breach of contract, intentional infliction of emotional distress, and DTPA violations ("the second summary judgment"). Two days later, the trial court "froze the case, i.e. "no further discovery may be initiated, no discovery may be supplemented and no further pleadings may be filed." About two months later, CNB filed a motion requesting the trial court to reconsider its decision to not grant it summary judgment on Bello's contract, emotional distress, and DTPA claims. The trial court granted CNB final summary judgment on all of Bello's claims ("the third summary judgment").

Bello appeals, arguing that (1) the summary judgment in favor of Chaggaris was improper, (2) the summary judgment in favor of CNB was improper, and (3) the trial court erred in considering CNB's motion for reconsideration.

IV SUMMARY JUDGMENT STANDARD OF REVIEW

We review the summary judgment granted in this case under the familiar standard: (1) the movant for summary judgment has the burden of showing that there is no issue of material fact and that it is entitled to judgment as a matter of law; (2) in deciding whether there is a disputed material fact issue precluding summary judgment, evidence favorable to the nonmovant will be taken as true;

(3) every reasonable inference must be indulged in favor of the nonmovant and any doubts resolved in its favor. See Nixon v. Mr. Property Management Co., 690 S.W 2d 546, 548-49 (Tex 1985).

A defendant is entitled to summary judgment if the summary judgment evidence establishes, as a matter of law, that at least one element of a plaintiff's cause of action cannot be established. See Centeq Reality, Inc. v. Siegler, 899 S.W. 2d 195, 197 (Tex. 1995); Rosas v. Buddies Food Store, 518 S.W.2d 534, 537 (Tex. 1975). To accomplish this, the defendant-movant must present summary judgment evidence that negates an element of the plaintiff's claim. Once this evidence is presented, the burden shifts to the plaintiff to put on competent controverting evidence that proves the existence of a genuine issue of material fact with regard to the element challenged by the defendant. See Centeq Realty, 899 S.W.2d at 197.

When reviewing a summary judgment granted on general grounds, as is the case with the three summary judgments in this case, we consider whether any theories set forth in the motion will support the summary judgment. See State Farm Fire & Cas. Co. v. S.S., 858 S.W.2d 374, 380 (Tex, 1993) (plurality op.); Carr v. Brasher, 776 S.W.2d 567, 569 (Tex. 1989).

V. PROPRIETY OF THE FIRST SUMMARY JUDGMENT

In his first two points of error, Bello argues that the summary judgment in favor of Chaggaris was improper because there were material fact issues and because Bello was required to join Chaggaris in the suit under section 93 of the United States Code. Section 93 is a federal statute that applies to forfeiture of a banking association:

If the directors of any national banking association shall knowingly violate, or knowingly permit any of the officers, agents, or servants of the association to violate any of the provisions of this chapter, all the rights, privileges, and franchises of the association shall be thereby forfeited.

Such violation shall, however, be determined and adjudged by a proper district or Territorial court of the United States in a suit brought for that purpose by the Comptroller of the Currency, in his own name, before the association shall be declared dissolved. And in cases of such violation, every director who participated in or assented to the same shall be held liable in his personal and individual capacity for all damages which the association, its shareholders, or any other person, shall have sustained in consequences of such violation.

12 USCA § 93 (West 1989). This statute does not apply to Bello's claims against Chaggaris, We overrule Bello's second point.

Bello pleaded that all acts done by CNB's officers, agents, servants, or employees were done "in the normal and routine course and scope of employment." Chaggaris stated in his affidavit that he was acting within his capacity as a vice-president of CNB when dealing with Bello. The president of CNB reaffirmed this fact in his affidavit. Bank officers acting within the scope of their authority are exempt from liability to persons dealing with them. See 7 Banks & Banking § 128 1/2 (Michie 1989).

Bello did not plead or prove that any acts by Chaggaris were done outside the scope of his employment. Accordingly, Chaggaris was entitled to summary judgment because he cannot be individually liable for his official acts. We overrule Bello's first point.

VI PROPRIETY OF THE SECOND SUMMARY JUDGMENT

A Defamation

In his third and fourth points of error, Bello argues that the trial court erred in granting CNB summary judgment on his defamation claims. CNB, in its motion for summary judgment, argued that Bello's defamation claims were barred by the statute of limitations.

Bello's defamation claim is governed by a one-year statute of limitations. See Tex. Civ. Prac. & Rem. Code ANN. § 16.002 (Vernon Supp. 1997). Bello acknowledged that the facts upon which all his claims are based occurred no later than December 11, 1992. Bello raised his defamation claims on May 23, 1995, well outside the statute of limitations. Bello did not plead the discovery rule. But Bello does not dispute that he did not sue within the one-year time period; he argues that the statute does not apply to business torts. We find no merit to this position and hold that Bello's defamation claim is barred by the statute of limitation.

Because we have found that the claim was not brought within the statute of limitations, we do not need to consider Bello's alternative argument that the defamation summary judgment was improperly based on CNB's argument that there was no evidence that CNB published a false communication to a third party. We overrule points three and four.

B Invasion of privacy

In his fifth and sixth points[2], Bello claims that the trial court erroneously granted summary judgment in CNB's favor on his invasion of privacy claims. CNB, in its motion for summary judgment, argued that Bello's invasion of privacy claims were barred by the statute of limitations.

Bello raised his tort claims in his second amended petition, which was filed on May 23, 1995. Torts are governed by a two-year statute of limitations. See Tex, Civ. Prac. & Rem. Code ANN. § 16.003 (Vernon Supp. 1977). Thus because Bello did not dispute that his claims arose, at the latest, on December 11, 1992 and because Bello did not plead the discovery rule, his invasion of privacy claim is time barred. We overrule points five and six.

2

VII. PROPRIETY OF THE THIRD SUMMARY JUDGMENT

A. Failure to state a claim

In his seventh pint, Bello argues that the trial court erred in granting the third summary judgment on all of his causes of action based on CNB's claim that Bello failed to state a cause of action. He asserts that CNB"s claim was an impermissible general demurrer.

CNB filed special exceptions to Bello's original petition asking that he be required to replead providing the specific facts that supported his contentions. Bello filed a first and second amended petition, adding more claims but failed to explain his previous claims. CNB then filed an amended answer and again specially excepted to Bello's vague claims, including his newly alleged causes of action. The trial court granted the special exceptions, finding that Bello had failed to state a cause of action, his claims were to vague, and his damages requests were not specific. Bello filed a third amended petition again adding new claims and failing to clarify his previous claims. CNB filed a second amended answer with special exceptions to Bello's claims. These special exceptions were pending at the time final summary judgment was granted.

Bello had many opportunities to amend his pleadings after the special exceptions had been granted, but he did not. His DTPA, breach of contract, tortious interference, defamation, and intentional infliction of emotional distress claims were never repleaded so as to correct the deficiencies pointed out by CNB. Thus, CNB was entitled to summary judgment. See Natividad v. Alexsis, Inc., 875 S.W.2d 695, 699 (Tex. 1994); Pietilla v. Crites, 851 S.W.2d 185, 186 (Tex. 1993). We overrule the seventh point.

B. Freezing order

In his tenth point, Bello claims that the trial court should not have considered CNB's motion for reconsideration because it violated the court's order freezing the case.

The motion for reconsideration was not a new pleading; thus, it did not violate the courts's order.
Cf. Hunte v. Hinkley, 731 S.W.2d 570, 571 (Tex. App.- Houston[14th Dist.] 1987, writ ref'd n.r.e.) (holding trial court can consider and grant summary judgment motion previously denied, so long as court retained jurisdiction). We overrule point ten.

C. DTPA

In points eight and nine, Bello argues that the trial court erred to grant the third and final summary judgment on his DTPA claims[3]. In Bello's pleadings, he never specified which provisions of the DTPA CNB allegedly violated, In fact, he continually refused to state what specific provision he was relying on. CNB argued the claim under section 17.46(b)(23) in its motion for reconsideration. Bello never questioned CNB's determination, but asserts that he is entitled to a general claim under DTPA.

Private litigants are limited to the DTPA causes of action listed in section 17.46. Tex. Bus. & COM. CODE ANN. § 17 46(b) (Vernon Supp. 1997); see Allstate Ins. Co. v. Watson, 876 S.W. 2d 145, 147 (Tex. 1994) (op. On reh'g). Bello did not attempt to allege facts specifying what acts he was complaining of or what part of section 17.46(b) CNB violated. In order to recover on a DTPA claim, Bello had to show CNB committed a false, misleading, or deceptive act or practice. See Tex. Bus. & COM. CODE ANN. § 17.50(a) (Vernon Supp. 1997); McDuffie v. Blassingame, 883 S.W. 2d 329, 333 (Tex. App.- Amarillo 1994, writ denied). By failing to specify what exactly CNB did that violated the DTPA, the trial court was correct to grant summary judgment on that ground.

Because we have found that summary judgment was proper on Bello's DTPA claim, we do not need to consider Bello's alternative argument that the DTPA summary judgment was improperly based on CNB's argument that there was no evidence of producing cause or damages. We overrule point eight and nine.

3

D Intentional infliction of emotional distress

In his eleventh point, Bello states that the trial court erred in granting the third summary judgment on his claims "under Tort Liability" because they "were still intact." Because the only tort claim that was still a live claim after the second summary judgment was Bello's intentional infliction of emotional distress allegations, we will only address that claim.

The elements of intentional infliction of emotional distress are:

1. CNB acted intentionally or recklessly,
2. The conduct was extreme and outrageous,
3. CNB's actions caused Bello emotional distress, and
4. Bello's emotional distress was severe.

See Matrix-Hill v. Reck, 923 S.W.2d 596, 597 (Tex. 1996). It is for the court to determine as a matter of law whether CNB's conduct is so extreme and outrageous as to permit recovery. See Wormick Co. v. Casas, 856 S.W.2d 732, 734 (Tex. 1993).

The summary judgment evidence we have set out above does not establish that CNB's conduct was extreme and outrageous, See eg Mattix-Hill 923 S.W.2d at 597-98 (holding there was no evidence to show Department of Human Services caseworker inflicted emotional distress on mother of child placed in DHS custody when caseworker told mother about the child's disappearance); Diamond Shamrock Ref. & Mltg. Co. v. Mendez, 844 S.W.2d 198, 202 (Tex. 1992) (holding falsely depicting plaintiff as thief is not sufficient to support intentional infliction of emotional distress). Accordingly, the trial court's summary judgment on this claim was proper, We overrule point eleven.

VIII. PROPRIETY OF DENIAL OF BELLO'S MOTION FOR SUMMARY JUDGMENT

In his final point of error, Bello argues that the trial court incorrectly denied his motion for summary judgment. Because we have found that the trial court was correct to grant summary in favor of CNB and because we find that none of Bello's assertions in his motion were meritorious, summary judgment would have been improper in favor of Bello. See Jones v. Strauss, 745 S.W.2d 898, 900 (Tex. 1988); Wiman v. Tomaszewicz, 877 S.W.2d 1, 5 (Tex.App.-Dallas 1994, no writ). We overrule point twelve.

IX Concludion

Because we have found that the trial court's summary judgment were proper, we affirm the trial court's judgement.

"S/ William Brigham
JUSTICE

Panel B: Day, Brigham and Holman, JJ
Do not publish
Tex. R. App. P. 47.3(a)

Appendix B

No. 48-156310-94

Gany Mike Bello d/b/a Nucleus Oil Company.	§	48th District Court of Tarrant County, 48-156310-94
v.	§	Filed August 26th 1996.
Citizens National Bank	§	

ORDER

Came on to be considered Defendants Motion for Reconsideration of Final Summary Judgment, Plaintiff Response and Objection to Defendants Motion for Reconsideration of Summary Judgment, Plaintiffs Motion to Strike Defendants Motion For Reconsideration of Final Summary Judgment and Defendants Motion to Strike Plaintiffs Fifth Amended petition, and after having considered the Motions, the authorities cited and the arguments of counsel, the Court is of the opinion that Defendant's Motions are well taken and should be GRANTED, and Plaintiff's Motions should be DENIED.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant's Motion for Reconsideration of final Summary judgment is GRANTED and final summary judgment is GRANTED as to the Defendants in all respects, Plaintiff's Motion to Strike Defendant's Motion for Reconsideration of Final Summary judgment is Denied and Defendants Motion to strike plaintiffs Fifth Amended Petition is Granted.

Signed this 26th day of August 1996.

"S/ Bob McCoy.
Judge presiding

App. C

THE SUPREME COURT OF TEXAS
Post Office Box 12248
Austin, Texas 78711 Tel. 512 463 1312

April 30, 1998.

RE: Case Number 98- 0005
Court of Appeals Number: 02-96-00287-CV
Trial Court Number: 48-156310-94

Style: Gany Mike Bello d/b/a Nucleus Oil Company
v.
Citizens National Bank, Et Al. and Ray Dickerson

Dear Counsel:

" Today, the Supreme Court of Texas denied the Petition For Review, as drafted.

Sincerely,

John T. Adams, Clerk

" S/ by Michael H. Kopp Deputy

Reproduced document under the US Supreme Court Rule.

App. D

THE SUPREME COURT OF TEXAS
Post Office Box 12248
Austin, Texas 78711 Tel. 512 463 1312

June 23, 1998.

RE: Case Number 98- 0005
Court of Appeals Number: 02-96-00287-CV
Trial Court Number: 48-156310-94

Style: Gany Mike Bello d/b/a Nucleus Oil Company
v.
Citizens National Bank, Et Al. and Ray Dickerson

Dear Counsel:

" Today, the Supreme Court of Texas overruled the motion for rehearing in the above styled petition for review.

Sincerely,

John T. Adams, Clerk

" S/ by Michael H. Kopp Deputy

Reproduced document under the US Supreme Court Rule.

Appendix E.

No. 48-156310-94

Gany Mike Bello d/b/a Nucleus Oil Company.	§	48th District Court of Tarrant County, 48-156310-94
v.	§	
	§	filed August 2, 1996.
Citizens National Bank et al. and Ray Dickerson (President)	§	

PLAINTIFF'S FIFTH AMENDED PETITION

To the Honorable judge of the said court:

Now comes Gany Mike Bello d/b/a Nucleus Oil Company, Plaintiff still complaining of CITIZENS NATIONAL BANK et al. And George Chaggaris, its President, Ray Dickerson, Defendants and files this his fifth Amended petition, and would show the court as follows;

I

This Suit is filed pursuant to the provisions of the TEX. BUS. & COM. CODE ANN., commonly known as the Deceptive Trade Practices and Consumer Protection Acts, hereinafter referred to as the DTPA, National Banking Act, US consume credit Reporting Act, Expedited Funds Availability Acts, United States Codes of Services, and Tort Liability, including but not limited to BREACH OF CONTRACT, INVASION OF PRIVACY DEFAMATIONM AND INFLICTION OF EMOTIONAL DISTRESS.

"S/ Mike Bello
Plaintiff- Petitioner.

Appendix F.

Gany Mike Bello d/b/a Nucleus Oil Company.	§	48h District Court of Tarrant County, 48-156310-94
v.	§	
Citizens National Bank et al And Ray Dickerson	§	

Vernon Texas Rules of Practice States.

Rule 63. Amendments and Responsive Pleadings.

Parties may amend their pleadings, respond to pleadings on file of other parties, file suggestions of death and make representatives parties, and file such other pleas **as they may desire by filing such pleas with the clerk at such time as not to operate as surprise to the opposite party,** provided, that any pleadings, responses or pleas offered for filing within seven days of the date of trial, or thereafter, or after such time as may be ordered by the judge under Rule 166, shall be filed only after leave of the judge is obtained, which **leave shall be granted by the judge Unless there is a showing that such filing will operate as a surprise to the opposite party.**

Appendix G.

No. 48-156310-94

Gany Mike Bello d/b/a Nucleus Oil Company.	§	48th District Court of Tarrant County, 48-156310-94
v.	§	
Citizens National Bank and George Chaggaris	§	filed August 19, 1996.

Defendants Motion to Strike Plaintiff's Fifth Amended Petition

To the honorable judge of said court:

Comes now citizens National Bank, Defendant, and files this its Motion to strike Plaintiff's Fifth Amended Petition, and in support would show this honorable court the following:

I

BACKGROUND

Plaintiff requested, and was granted, a continuance in this matter due to his supposed retention of an attorney who allegedly needed additional time to prepare for trial. As of this date, no attorney has filed an d appearance in this matter. This Court froze the discovery and pleadings in this matter to afford this pro se Plaintiff the opportunity to retain competent counsel without penalizing Defendants with the additional cost of new discovery requests and defending against new pleadings. Defendants' counsel did not oppose Plaintiff's motion for continuance due to the court's order freezing discovery and pleadings.

II

Defendant is entitled to request reconsideration of the summary judgment as a matter of law. Defendants' motion is not a new pleading nor does it raise any new issues of law or fact in violation of this court's order. If anything, Defendants' motion is an attempt to avoid further litigation in furtherance of the court's duty to conserve judicial resources If Defendants' motion to reconsider is successful, Defendants and the court will be spared the time and expense of an unnecessary trial.

III

On August 2, 1996, Plaintiff filed his Fifth Amended Petition in this matter which adds at least fine new causes of action, a new party, and alleges violations of several Federal acts. Plaintiff's petition is made in violation of both the spirit and letter of this Court's order of May 23rd 1996. Defendants urge that this Plaintiff not be allowed to hold both this court and Defendants hostage. A pro se party is expected to know and abide by the rules of procedure.

WHEREFORE PREMISES CONSIDERED, Defendants pray that this Court set this Motion for hearing and upon hearing grant this motion to strike Plaintiff's Fifth Amended Petition and for Defendants to recover other relief to which they may be entitled.

Respectfully submitted.

"S/ C. W. Stocker and David Keltner
Attorneys for the Defendants.